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District Court

DOUGLAS F. CUSHNIE

P. O. BOX 949

SAIPAN, MP 96950

TELEPHONES: (670) 234/6843 • 234/6830

FAX: (670) 234/9723

DEC 13 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Attorney for **Plaintiff**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

PEDRO R. DELEON GUERRERO,)	CIVIL ACTION NO. 04-0033
)	
Plaintiff,)	
)	
vs.)	
)	NOTICE OF APPEAL
MASAYUKI ISODA aka)	
MIKE ISODA,)	
)	
Defendant.)	
_____)	

Comes now Pedro R. Deleon Guerrero, plaintiff herein and appeals to the United States Court of Appeals for the Ninth Circuit that certain order granting defendant's motion for summary judgment entered November 15, 2005, and the order awarding attorneys fees and costs entered on December 12, 2005, by the honorable Alex R. Munson, District Judge.

DATED this 12th day of December, 2005.

DOUGLAS F. CUSHNIE
Attorney for Plaintiff

BY


DOUGLAS F. CUSHNIE

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District Court

NOV 15 2005

For The Northern Mariana Islands
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RECEIVED
DOUGLAS F. CUSHNIE
DATE: 11/15/05
TIME: 9:25a
BY: [Signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

PEDRO R. DELEON GUERRERO,)

Plaintiff)

v.)

MASAYUKI ISODA, also known as)
Mike Isoda,)

Defendant)

Civil No. 04-0033

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

THIS MATTER came before the court on Thursday, November 10, 2005, for hearing of defendant's motion for summary judgment. Plaintiff appeared by and through his attorney, Douglas F. Cushnie; defendant appeared personally and by and through his attorney, Richard W. Pierce.

THE COURT, having considered the written and oral arguments of counsel, hereby grants defendant's motion for summary judgment.

1 Plaintiff Pedro Guerrero filed this action in Commonwealth Superior Court. It
2 was removed here by defendant Isoda on November 29, 2004, based on diversity of
3 citizenship and more than \$75,000.00 at issue. The court must use Commonwealth
4 substantive law, including the Restatements of Law. See 7 N.Mar.I. Code § 3401.
5 Plaintiff alleged breach of a lease by abandonment. Defendant moved for summary
6 judgment, arguing that plaintiff's complaint seeks to impose legal duties on him
7 regarding the two pieces of real property involved that nowhere appear in their
8 settlement agreement or lease.
9
10

11 The undisputed material facts are as follows. To resolve a dispute between
12 them, plaintiff and defendant entered into a settlement agreement on November 1,
13 1991. By the terms of the settlement, plaintiff was to pay defendant \$350,000.00
14 within ninety days of execution of the agreement or, failing that, to "immediately
15 enter into a fifty-five (55) year lease with Isoda to the Garapan properties." The
16 agreement continued:
17
18

19 Isoda will then sublease or assign the lease to said Garapan properties,
20 and upon this occurrence, ISODA shall pay to GUERRERO from the
21 gross proceeds of said sublease or assignment of lease thirty-three and
22 one-third percent (33 1/3%) of said amount. The sublease or
23 assignment shall be for not less than the fair market value of said
24 Garapan properties as determined by an appraisal conducted by an
25 appraiser qualified to conduct real property appraisals in the
26 Commonwealth. In the event the parties are unable to agree on an
appraiser, then GUERRERO and ISODA shall each select an appraiser
and the fair market value shall be the mean of the two appraisals.

1
2 Plaintiff Guerrero had the right to reject any proposal. Lease at ¶ 16.

3
4 In the complaint, plaintiff Guerrero asserts that defendant Isoda has never
5 assigned or subleased the real property. (This is true, but Isoda would have accepted
6 an offer of \$120,000.00 that Guerrero rejected.) Plaintiff also asserts that defendant
7 had a duty to improve or maintain the property in an attractive and healthy manner,
8 and breached the lease by failing to do so.

9
10 The court accepts counsel's representation as an officer of the court that both
11 parties were represented by counsel during the negotiations leading up to and
12 resulting in both the settlement agreement and the lease, and that the documents
13 underwent revision during this process.

14
15 The court starts with the time-honored proposition that a writing is interpreted
16 as a whole and that all writings that are part of the same transaction are interpreted
17 together. Restatement (Second) of Contracts, §§ 202(2), 209(1); Seol v. Saipan
18 Honeymoon Corp., 5 NMI Reports 238 (1999) (there is no reason to go outside the
19 four corners of an integrated document). Further, where there is a binding
20 agreement, evidence of prior or contemporaneous agreements or negotiations is not
21 admissible in evidence to contradict a term of the writing. Restatement (Second) of
22 Contracts, § 215.

23
24
25
26 The lease and the settlement agreement are silent as to any deadline imposed

1 upon defendant to sublease the property to another person. Plaintiff concedes that
2 there was no specific time period in which Isoda was to have acted and, in fact,
3 agrees that "there is no precise time frame because the parties clearly recognized that
4 there is no magical period within which it will absolutely occur." Opposition at p. 6-
5 7. Instead, Guerrero asserts that Isoda was required to make "businesslike efforts" to
6 sublease or assign the property. *Id.* p. 7 (top). However, no such requirement
7 appears in the negotiated settlement agreement or the executed lease and the court
8 cannot add terms to the unambiguous document signed by the parties.
9
10

11 Also, defendant argues--correctly, and undisputed by plaintiff--that there is
12 nothing in the settlement agreement or lease that requires him to improve or maintain
13 the property. Lacking a specific, lease-imposed duty upon him, and in light of the
14 fact that defendant "pre-paid" the entire lease amount by accepting the property in
15 lieu of \$350,000.00, defendant is not required to maintain or improve the property
16 and thus cannot be said to have breached the lease and "abandoned" the real
17 property.
18
19
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21 In retrospect, both parties probably wish that they had included or omitted
22 certain items in the settlement agreement and lease. However, the documents as they
23 stand are unambiguous and not susceptible to any other interpretation than that
24 which the court has honored above.
25
26

1 Pursuant to Ground Lease ¶ 30, defendant as the prevailing party is entitled to
2 an award of reasonable attorney's fees and costs. Defendant shall have until 3:30
3 p.m., Friday, November 25, 2005, to submit an affidavit in support of an award of
4 fees and costs. Plaintiff shall have until 3:30 p.m., Monday, December 5, 2005, to file
5 an opposition to the amounts requested. The court will decide the matter on the
6 submissions, unless it feels that oral argument would be useful.
7
8

9 DATED this 15th day of November, 2005.
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12 
13 ALEX R. MUNSON
14 Judge
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RECEIVED
DOUGLAS F. CUSHNEE
DATE: 12/12/05
TIME: 10:55 am
BY: _____

FILED
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District Court

DEC 12 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

PEDRO R. DELEON GUERRERO,)

Civil No. 04-0033

Plaintiff)

v.)

ORDER AWARDING
ATTORNEY'S FEES
AND COSTS

MASAYUKI ISODA, also known as)
Mike Isoda,)

Defendant)

PURSUANT TO the court's order of November 15, 2005, finding defendant entitled to an award of attorney fees and costs as the prevailing party under paragraph 30 of the Ground Lease between the parties; NOW, THEREFORE,

The court, having reviewed the attorney's fees claimed, finds that the hourly rate charged by defendant's attorney is reasonable and appropriate in this community for an attorney of counsel's experience. The court further finds that the total hours

1 claimed appear to be reasonable, were necessarily expended in the litigation, and are
2 reasonable for the results obtained.

3
4 Filing fees are recoverable costs under 28 U.S.C. § 1920. Deposition fees are
5 also recoverable costs under the statute. The court is satisfied that the deposition
6 appeared reasonably necessary at the time it was taken, Evanow v. M/V Neptune,
7 163 F.3d 1108, 1118 (9th Cir. 1998), and it was apparently used by both parties in the
8 summary judgment motion. See e.g. Jop v. City of Hampton, VA, 163 FRD 486, 488
9 (E.D.Va. 1995) (whether the case goes to trial is irrelevant when ascertaining
10 taxability of deposition costs). Accordingly,
11

12
13 IT IS ORDERED that defendant shall have judgment against plaintiff for
14 attorney's fees in the amount of \$5,618.66 and for costs pursuant to 28 U.S.C. § 1920
15 in the amount of \$306.00.
16

17 DATED this 12th day of December, 2005.
18
19

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21 
22 ALEX R. MUNSON
23 Judge
24
25
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ORIGINAL

FILED
Clerk
District Court

AO 133 (Rev. 9/89) Bill of Costs

United States District Court

DEC 12 2005

DISTRICT OF

For The Northern Mariana Islands
By _____
(Deputy Clerk)

PEDRO R. DELEON GUERRERO,
Plaintiff,

BILL OF COSTS

V.
MASAYUKI ISODA aka MIKE ISODA,
Defendant.

Case Number: 04-0033

Judgment having been entered in the above entitled action on Nov. 15, 2005 against Pedro R. Deleon Guerrero,
Date
the Clerk is requested to tax the following as costs:

Fees of the Clerk	\$ 150.00
Fees for service of summons and subpoena	
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	
Fees and disbursements for printing	
Fees for witnesses (itemize on reverse side)	
Fees for exemplification and copies of papers necessarily obtained for use in the case	
Docket fees under 28 U.S.C. 1923	
Costs as shown on Mandate of Court of Appeals	
Compensation of court-appointed experts	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	
Other costs (please itemize)	
Deposition Transcription Cost	156.00
TOTAL \$	306.00

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to:

Signature of Attorney: _____

Name of Attorney: Richard W. Pierce

For: Masayuki Isoda aka Mike Isoda

Date: Nov. 15, 2005

Name of Claiming Party

Costs are taxed in the amount of \$306.00

and included in the judgement.

Clerk of Court

By: _____

Deputy Clerk

DEC 12 2005

Date

